

REMARKS

Entry of the foregoing and further and favorable reconsideration of the subject application in light of the foregoing amendment and the following remarks:

Applicant respectfully submits that no new matter has been added.

Claims 1-14 are currently pending.

Restriction Requirement

The Examiner has issued a Restriction requirement under 35 U.S.C. 121 and has issued a requirement under 35 U.S.C. 121 that the Applicant elect a single disclosed species for prosecution on the merits. Applicant hereby affirms the July 22, 2005 provisional election without traverse to prosecute the invention of Species 1 (claims 1-10, 13 and 14). Claims 11 and 12 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected invention.

Drawings

The Examiner has issued an Objection to the Drawings under 37 CFR 1.84(p)(5) and required that the drawings include the following reference sign(s) mentioned in the description: apertures 6. Accordingly, the Applicant respectfully submits herewith a Replacement Sheet pursuant to 37 CFR 1.121(d) in response to the Examiner's Objection. Accordingly, Applicant respectfully urges the Examiner to withdraw the Objection as the Drawings are in compliance with the requirement. Support for the amendment showing the apertures 6 may be found generally throughout the application and specifically, *inter alia*, in the Specification as filed at page 6, lines 4-24. No new matter has been added.

The Examiner has issued an Objection the Drawings under 37 CFR 1.83(a), requiring that the drawings show the anchor means claimed by the present invention. Accordingly, the Applicant respectfully submits herewith a Replacement Sheet pursuant to 37 CFR 1.121(d) in response to the Examiner's objection. Accordingly, Applicant respectfully urges the Examiner to withdraw the Objection as the Drawings are in compliance with the requirement. Support for the amendment showing the anchor means may be found generally throughout the application and specifically, *inter alia*, in the Specification as filed at page 5, line 20 through page 6, line 3. No new matter has been added.

35 USC § 112.

The Examiner has rejected Claim 10 under 35 USC §112, second paragraph as indefinite for failing to provide antecedent basis for "the liner sheet". In complete response, the Applicant has herein above amended Claim 10 to provide the required antecedent basis by deleting the word "sheet" after the word "liner" and inserting the words "tubular sheet" before the word "sheet".

Accordingly, the Applicant respectfully urges the Examiner to withdraw the rejection of Claim 10.

35 USC § 102.

The Examiner has rejected Claims 1-4,6,9,10,13 and 14 under 35 USC 102(b) as anticipated by Bryan et al. (US6067752). The Examiner notes that Bryan et al. discloses a plant root and bulb protection device comprising a continuous plastic tubular sheet liner (14) with closed bottom end and open top end and a plurality of apertures wherein a plurality of apertures extending generally from the top end to the bottom end. The Examiner further notes that with

respect to claims 2-4 of the instant application, Bryan et al. further disclose a closure means (10) and an anchor means (27,26).

In response, Applicant has herein above amended Claim 1 of the instant application to reflect the antiparallel orientation of the apertures and the substantially non rigid nature of the liner, which renders the invention distinct from the disclosure of Bryan et al (US6067752) under 35 USC 102(b). Moreover, Applicant notes that the disclosure of Bryan et al describes a “rigid cage device 14” in Column 3, which is clearly distinct from the instant invention as amended.

Accordingly, Applicant respectfully submits that the application as amended is therefore not anticipated by Bryan et al and urges the Examiner to withdraw the rejection of Claims 1-4,6,9,10,13 and 14 under 35 USC 102(b).

35 USC § 103.

The Examiner has rejected Claim 5 under 35 USC 103(a) as unpatentable over Bryan et al (US6067752) in view of Bergman (US5060420). The Examiner notes that Bryan et al. does not provide the closure means as a tie, while Bergman discloses a closure means as a tie.

In response, Applicant has herein above amended Claim 1 of the instant application to reflect the antiparallel orientation of the apertures, which renders the invention distinct from the disclosure of Bryan et al (US6067752). Accordingly, Applicant respectfully submits that the application as amended is therefore not unpatentable over Bryan et al in view of Bergman and therefore urges the Examiner to withdraw the rejection of Claim 5.

The Examiner has rejected Claims 7 and 8 under 35 USC 103(a) as unpatentable over Bryan et al (US6067752). The Examiner notes that Bryan et al. does not disclose a plurality of apertures having diagonally shaped apertures. The Examiner asserts that a plurality of apertures

having diagonally shaped apertures would have been obvious to one of ordinary skill in the art at the time the invention was made in whatever form or shape was desired or expedient. In addition, the Examiner asserts that the orientation and/or location of the diagonally shaped apertures as claimed in claim 8 would have been obvious to one of ordinary skill in the art at the time the invention was made in whatever form or shape was desired or expedient since it has been held that rearranging parts of an invention involves only routine skill in the art. The Examiner further asserts that it appears that the orientation and/or location of Bryan et al's apertures would perform equally as well as that of the instant invention.

In response, Applicant respectfully submits that the orientation described by the invention is significant, having a form and shape, which solves a critical problem of the prior art. The Applicant further submits that it would not have been obvious to one of skill of art to do what the Applicant has done. Moreover, no one has done what the Applicant has done. Indeed, Applicant's invention provides several advantages over the prior art in general and Bryan et al in particular. The orientation and/or location of the diagonally shaped apertures provides a structural advantage to the liner, by providing a integrity barrier to tearing and ripping of the liner material. For example, were the diagonal aperture pattern left completely parallel rather than in alternating anti-parallel orientation, a small tear or defect in the material results in continuous ripping, compromising the desired function of the invention, and increasing the likelihood of pest infiltration. The notion of using anti-parallel unit orientation in order to increase the stability of a "sheet" is not something that is well known in the relevant art, and accordingly, is not obvious to one of skill in the relevant art. However, in non-related disciplines, such as in biochemical, mechanical and molecular systems, it is understood that anti-

parallel orientations lend an increased stability to a sheet, enhancing durability of material and reducing the likelihood of sheet failure. The invention described by Bryan et al does not provide an anti-parallel orientation for the aperture units, nor does Bryan perform such function, nor does Bryan et al contemplate or infer such an advantage. Indeed, nothing in the prior art suggests doing what the Applicant has done with respect to the present invention.

Accordingly, Applicant respectfully submits that the application as amended is therefore not unpatentable over Bryan et al and urges the Examiner to withdraw the rejection of Claims 7 and 8.

Prior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from combining their teachings. The suggestion to combine the references should not come from applicant. Orthopedic Equipment Co. v. United States, 217 U.S.P.Q. 193, 199 (CAFC 1983); Uniroyal, Inc. v. Rudkin-Wiley Corp., 5 U.S.P.Q. 2d 1434 (C.A.F.C. 1988) (“where prior-art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself...Something in the prior art must suggest the desirability and thus the obviousness of making the combination.”).

Applicant respectfully submits that the prior art does not suggest the combination disclosed by the present invention.

CONCLUSION

For the foregoing reasons, Applicant respectfully submits that the application and amended claims are now in proper form for allowance and that the amended claims are patentable over the prior art.

Therefore, Applicant respectfully submits that the application is now in condition for allowance, respectfully solicits favorable action on all pending claims, namely Claims 1-10, 13 and 14.

If for any reason this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. 706.03(d) and 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings. In the event that there are any questions concerning this Amendment, or the application in general, the Examiner is respectfully urged to telephone the undersigned so that prosecution of the application may be expedited.

No fee, other than the \$510.00 fee for a three-month extension of time, is deemed necessary in connection with the filing of this Amendment.

Respectfully submitted,
STEIN & STEIN

By: _____

Steven B. Stein

Reg. No.: 43,159

STEIN & STEIN
114 Old Bloomfield Ave.
Parsippany, NJ 07054
(973) 882-8820
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